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SENSITIVE
STATE FOR EAP AND EEB/TPP/IPE - MCGOWAN,
STATE PASS USTR FOR CUTLER, TRICK AND CHOE GROVES

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SUBJECT: 2009 SPECIAL 301 - POST RECOMMENDATION

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¶1. (SBU) SUMMARY: 2008 saw a significant acceleration of Korean efforts on intellectual property rights (IPR) protection and enforcement. On February 25, 2008, Lee Myung-bak was inaugurated as Korea's President; Lee explicitly identified stronger IPR protection as an important strategy to boost foreign and domestic investment in Korea. The improvements in 2008 also reflect a broader, longer-term change in Korean attitudes toward IPR in recent years, as Koreans have come to realize that rewarding and protecting innovation can be key to enhancing the country's competitiveness (particularly vis a vis China). 2008 saw significant new developments, outlined in paras 5 through 8: Korea's legal/regulatory framework for IPR; enforcement resources; precedent-setting court decisions; and a vast increase in the number of pirated materials seized or deleted. Local representatives of U.S. IPR stakeholders report satisfaction with the progress being made, note marked improvement in the access they enjoy to ROKG IPR officials, call Korea one of the pace-setters in the region, and also express some (pleased) surprise that the ROKG is already pushing so hard for new IPR improvements just one year after the conclusion of the KORUS FTA (which contains what most U.S. stakeholders call the strongest IPR chapter of any U.S. FTA ever concluded). Emerging forms of digital piracy are a challenge in Korea's broadband society, but U.S. copyright stakeholders believe the ROKG is cognizant of the need for special measures to combat it, and legal authorities and enforcement efforts expanded significantly in 2008. RECOMMENDATION: Post believes that the IPR actions taken by Korea in 2008 and early 2009 reflect both a significant strengthening of Korea's IPR regime and indicate that the push for stronger IPR protection has become a domestically generated, self-sustaining process in Korea. Post recommends that Korea be removed from the Special 301 Watch List in ¶2009. END SUMMARY.

¶2. (SBU) 2008 saw a significant acceleration of Korean efforts on intellectual property rights (IPR) protection and enforcement. In February 25, 2008, Lee Myung-bak was inaugurated as Korea's President. Lee was elected on a platform of increasing economic growth, including by boosting foreign and domestic investment in Korea. Lee explicitly identified stronger IPR protection as an important strategy to boost foreign and domestic investment in Korea. When he released his "100 Policy Tasks" following his election, President Lee listed "Protecting intellectual property rights (and establishing fair trade practices)" as Task 15 (grouped with four other separate tasks under the objective "To establish a trust-based society governed by the rule of law"). But the commitment to IPR was not merely rhetorical. President Lee and his government sent a message to ROKG IPR officials -- in the Ministry of Culture, Sports and Tourism (MCST), the Korea Intellectual Property Office (KIPO), the Korea Customs Service (KCS), and prosecutors at the Ministry

of Justice (as well as police) -- to come up with new ways to strengthen Korea's IPR regime, accelerate plans already under discussion, push hard for strong enforcement, and reach out to IPR stakeholders -- domestic and foreign alike -- to hear and try to address their concerns. The result has been by all measures a significant strengthening of Korean IPR protection and significantly expanded enforcement in 2008 and early 2009.

13. (SBU) The efforts of the past year reflect the convictions of President Lee and his one-year old government. But they also reflect a broader, longer-term change in Korean attitudes toward IPR in recent years. Part of that stems from longstanding trade policy discussions with Korea's major trading partners (principally the United States, although the European Union has periodically weighed in on its priorities as well). But a more fundamental transformation has been a growing understanding that a stronger IPR regime serves Korea's interests, both domestically and internationally. As Korea tries to position itself in the region -- trying to catch up with Japan and (the big change) keep ahead of China -- Koreans have come to realize that rewarding and protecting innovation can be key to enhancing the country's competitiveness. It has become widely accepted that strong IPR protection and enforcement will help Korea make the final transition from emerging economy to advanced economy. Similarly, Koreans understand that their own adoption of high IPR standards will put the country in a better position to press other countries in the region to extend better protection to Korean IPR. The success in recent years of Korea's "Hallyu" (Korean Wave) cultural industries (film and music) in Asian regional markets has provided added rationale within Korea for strengthening copyright protection, both domestically and internationally.

14. (SBU) Korea's progression from regional IPR laggard to leader culminated in the June 2007 signing of the KORUS FTA, a trade agreement that is widely regarded by U.S. (and international) IPR stakeholders as having the strongest IPR chapter of any U.S. trade agreement. The public release of the text drew attention to the fact that the IPR chapter of that agreement was the longest of the agreement; but critics' complaints that the lengthy text was "one-sided" (because the commitments were almost entirely on Korea, not the United States) failed to develop much traction in Korea, as ROKG officials explained that strengthening Korea's IPR regime was clearly in Korea's own interest. (Note: the KORUS FTA ratification bill was re-introduced in Korea's National Assembly on October 8, 2008, and was actively debated at the end of the year; most observers expect the FTA to eventually pass, since President Lee's GNP party is strongly committed to the FTA and has a sizable majority, but the lack of progress toward Congressional ratification in Washington has slowed the process down). Like all countries, Korea continues to face IPR challenges, particularly in new technologies, and the solutions it devises may not precisely mirror those adopted in the United States. What is indisputable, however, is that the ROKG is not just saying the right things about a strong IPR regime but is also devoting the resources and political will to strengthen it further.

Major Developments over the Past Year

15. (U) Legislative and Regulatory Improvements:

-- The Act on Persons to Conduct Duties of Judicial Police Authority was amended on June 13, 2008 to give judicial authority to MCST officials and its local agencies to conduct enforcement activities related to copyright infringement. Under this new authority, MCST created the Copyright Protection Team (CPT) in August 2008 and granted it judicial authority over enforcement related to Korea's two copyright laws (the Copyright Act and Computer Programs Protection Act), empowering MCST for the first time to act on its own initiative in enforcing IPR laws.

-- In August 2008, the MCST drafted legislation that would merge Korea's two main copyright laws, the Copyright Act (CA) and the Computer Programs Protection Act (CPPA). The legislation significantly strengthens enforcement against online piracy and goes beyond Korea's KORUS FTA commitments in terms of IPR protections. For example, the law contains a "three strikes" provision which gives MCST the power to order internet service providers (ISPs) to close their boards after three warnings. The legislation was introduced to the Culture, Sports and Tourism Committee in Korea's National Assembly on February 26, 2009. The bill is considered non-controversial and likely to pass, though the timing of its passage is currently uncertain, since the copyright bill is being considered in a package with controversial media reform bills.

-- The Act on Regulation and Punishment of Concealment of Criminal Profit was passed on December 19, 2008, and will come into force on March 19, 2009. The law allows for confiscation of criminal profits and includes IPR infringements under the Copyright Act and Computer Programs Protection Act as serious crimes.

-- Korea acceded to the WIPO Performances and Phonograms Treaty (WPPT) on December 18, 2008. The WPPT will enter into force with respect to Korea on March 19, 2009.

-- The ROKG's copyright structure was streamlined, with responsibility for software copyright issues moving from the now-disbanded Ministry of Information and Communications to the Ministry of Culture, Sports and Tourism, which now has primary responsibility for all copyright issues.

16. (U) Significant Legal Actions:

-- In January 2009, a court sentenced the chiefs of the country's top four internet service providers (ISPs) to a year's imprisonment and charged them a 30 million won penalty for facilitating illegal distribution of copyrighted content. This marked the first criminal charges ever brought against such online activities.

-- In June 2008, Korean prosecutors indicted eight "webhard" storage operators and heavy uploaders (copyright violators) of infringing content. (Webhards are web-based storage services, also referred to as cyberlockers, which serve as a closed file-sharing system in which pirates store their illegal content online and distribute passwords to downloaders who usually pay for access via credits administered by the webhard operator.) On February 2009, six were convicted and sentenced to up to one year in prison, the first time a prison sentence has been handed down for online piracy. (The other two faced heavy fines.)

-- In December 2008, prosecutors indicted six "webhard" operators. Their case is still pending.

-- In 2008, there were also several high-profile crackdowns against Korea's two main Internet portals (Daum and Naver) for failing to delete illegally posted music files even after getting takedown requests from copyright holders.

17. (U) Continued Expansion of Enforcement Resources and Activities:

-- The 2009 MCST budget allocation for copyright protection for enforcement, education and public campaigns increased by 40 percent to 30 billion won (up from 24 billion won in 2008).

-- MCST established the Illegal Copyright Obstruction Project (ICOP), which is designed to find copyright infringing files whose names or channels have been disguised to evade detection.

18. (U) Dramatic Expansion of Enforcement Activities:

-- Enforcement by the Copyright Protection Center (CPC)

increased significantly. It deleted 28 million online music, visual and publications files in 2008, more than double the 12.5 million files deleted in 2007. This increase was attributed to an increase in manpower (which now allows the CPC to operate 24 hours a day) and improved piracy search technology.

-- Books. The CPC confiscated 17,811 pirated books in 2008, up from 10,068 in 2007. The CPC deleted 12.16 million printed publications on-line, up from 3.23 million in 2007.

-- CPC, police and prosecutors engaged in a special enforcement period for 100 days between April and June 2008 in Seoul and surrounding Gyeonggi Province, confiscating 172,081 items -- four times as many illegal DVDs, tapes, CDs, books and pieces of reproduction equipment as were confiscated during the same period in 2007.

-- Circumvention devices (illegal modification chips): Korean Customs Service (KCS) stepped up efforts to block the entry into Korea of circumvention devices. 131,636 devices (valued at roughly 4 billion won) were seized in 2008. Devices smuggled from China accounted for roughly 92 percent of the devices seized, while the remainder came from Hong Kong; KCS announced it would try to cooperate with Chinese authorities to block the goods at the source in China. In January 2009, KCS conducted a special raid of sales outlets and warehouses and seized 75,653 circumvention devices, more than half the total seized in 2008 (January is considered a peak season for game kits to be given as presents to graduating students).

-- Trademarks and patents. The Korean Intellectual Property Office (KIPO), with the help of police and prosecutors, seized and destroyed over 97,000 items, up from roughly 36,000 the preceding year. KIPO also took down 123 websites selling counterfeit goods, up from 48 such take-downs in 2007.

-- The Korean Customs Service (KCS) seized more than 928 billion won worth of counterfeit goods, an amount roughly 25 percent higher than in 2007.

19. (SBU) Post spoke with local representatives of U.S. IPR stakeholders in February 2009 as part of the research for this report. Their key views follow:

Computer software:

Business Software Alliance/Microsoft. Strongly support Lee Administration's push to strengthen enforcement against IPR infringement and tougher sanctions against Internet service providers. BSA continues to believe that the existing system of software copyright enforcement (with prosecution triggered by complaints by rights holder) is one of the most effective in any jurisdiction in which BSA operates.

Software Property Right Council (group comprised of Korean software industry plus leading U.S. software firms): Notes ROKG has shown greater public attention to piracy, and a stronger will to enforce against illegal copyright infringement, including an increase in police anti-piracy actions in 2008.

Film:

Warner: Pleased by several recent signs of improvement, including: the "three strikes" provision in the Copyright Act revision legislation (currently before the National Assembly); measures in that legislation requiring Internet service providers to take down infringing content; and the prosecution and conviction of "webhard" storage sites in February 2009 (which resulted in six site operators being sentenced to prison terms and two receiving stiff fines). Also, believed that the 100-day anti-piracy campaign in mid-2008 was effective, and noted a diminished presence of pirated optical disks in usual markets like Yongsan Electronics Market in Seoul, even after the period concluded.

Music (Sony, Universal, Warner):

Sony, Universal, Warner: All agree the ROKG has demonstrated unprecedented interest this year in listening to the concerns of industry regarding IPR enforcement. The Copyright Protection Center (CPC)'s issuance of take-down orders has resulted in copyright infringing P2P and "webhard" operators coming to music companies to negotiate settlements before being assessed fines by ROKG officials. One representative said in internal company discussions, he and colleagues in Taiwan felt that more was being done to strengthen copyright legislation in Korea than in Taiwan, and that IPR protection was stronger in Korea.

Books:

Cengage Learning (APA representative): Book piracy, especially near college campuses, has become less visible following a series of raids by police and prosecutors with the cooperation of industry (Note: the U.S. book publishing industry retains well-connected consultants in Korea who will work with enforcement authorities to arrange raids on suspected sites). The number of raids has fallen off this year since APA has provided fewer funds for consultants to organize raids. The sell-through rate (percentage of enrolled students buying legitimate copies of a textbook) has not increased: this could be due to piracy moving further underground or due to other economic factors (recession, weak won).

Video/Computer Games:

Electronic Arts: Local office plays limited role on IPR and enforcement. EA Korea is trying to compile a list of infringing sites, but most sites do not originate in Korea. Online consumer games are more popular than console games in Korea, and are more difficult to pirate. (NOTE: the Embassy has not been approached by any U.S. patent or trademark rights holder with any concerns about Korea's IPR regime.)

110. (SBU) On-line Piracy - a Special Challenge:

All advanced economies are facing a growing threat of digital piracy, and that challenge is pronounced in Korea, which regularly registers as a country with one of the world's highest penetration rates for broadband and other high-speed internet services. IPR stakeholders believe the Korean Government has become cognizant of the need for special measures to combat this growing threat. In part this reflects growing global regulatory trends (a constant benchmark for Korean regulators), but it also reflects a growing recognition that digital piracy, if unchecked, could deal a potentially fatal blow to Korea's cultural industries, which remain overwhelmingly dependent on Korea's domestic market. Enforcement resources and legal authorities for online IPR enforcement increased significantly in 2008. The number of documents deleted climbed dramatically in 2008. With characteristic Korean zeal, MCST contacts boasted that the initial draft of the 2008 bill combining the Copyright Act and Computer Programs Protection Act had anti-piracy provisions that were the strongest in the world (although some were amended as the bill was debated in the National Assembly). When asked about the situation in Korea, post's MPAA (motion picture) contacts said that between the growing access to high-speed Internet (which facilitated piracy) and the growing ROKG resources devoted to online enforcement, they found the overall situation with on-line piracy in Korea to be about the same or slightly improved -- essentially the same situation MPAA faced in Japan, Taiwan, Hong Kong and Singapore, which they saw as Korea's peer group. Korea can not reverse the dissemination of digital technology, any more than those countries can (or the United States). But it is clearly trying to seize the initiative in the fight against digital piracy, and by all measures saw significantly greater results in 2008.

Recommendation

¶11. (SBU) Few countries have come as far on IPR in as brief a period as Korea. Korean IPR experts trace the start of Korea's IPR regime to U.S. trade pressure in the late 1980's. At the time, they acknowledge, Koreans remained unconvinced about the benefits of stronger IPR, but reluctantly agreed to create a viable IPR system to preserve Korea's access to the U.S. market. Today, two decades later, Korea is a major generator of intellectual property -- patents, copyrights, trade secrets and even trademarks -- and has a strong, undisputed commitment to effective enforcement, both domestically and internationally. While the United States continues to serve as Korea's principal benchmark for IPR, Korea hopes to work with us as a partner on IPR, not just bilaterally but also in regional and multilateral bodies as well. U.S. stakeholders, while referencing the universal fight against new forms of digital piracy, tell us that in the scope of its IPR efforts, and its readiness to listen to foreign concerns, Korea has become one of the pace-setting countries in the region.

¶12. (SBU) The significant improvements in Korea's IPR regime and enforcement over the past year -- perhaps the most significant agenda of new ROKG IPR measures in the past decade -- would be impressive in their own right, and reflect the personal commitment of President Lee (and his government) to stronger IPR protection. What makes them particularly noteworthy is that coming the year after the KORUS FTA was concluded, with its strong bilateral IPR chapter, these new moves have been largely self-generated, rather than in response to foreign pressure. The ROKG's commitment to these measures largely came as a (pleasant) surprise to U.S. IPR stakeholders, rather than as a result of painstaking bilateral negotiations. This demonstrates that the commitment to strong, effective IPR protection has reached critical mass in Korea, is self-generated rather than externally driven, and is an encouraging portent for future handling of IPR issues in Korea.

In view of the above, Embassy Seoul recommends that Korea be removed from the Special 301 Watch List in 2009.
STEPHENS